

19TH JUDICIAL DISTRICT COURT FOR THE PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

NO.

597427

SEC. 27

LOUISIANA PUBLIC DEFENDER BOARD
AND DERWYN DEL BUNTON, IN HIS OFFICIAL CAPACITY AS PUBLIC DEFENDER
FOR THE 41ST JUDICIAL DISTRICT AND AS ADMINISTRATOR OF THE INDIGENT
DEFENDER FUND FOR THE 41ST JUDICIAL DISTRICT,

VERSUS

HONORABLE JULIAN PARKER, CHIEF JUDGE, SECTION G,
HONORABLE LAURIE A. WHITE, SECTION A,
HONORABLE LYNDA VAN DAVIS, SECTION B,
HONORABLE BENEDICT WILLARD, SECTION C,
HONORABLE FRANK A. MARULLO, JR., SECTION D,
HONORABLE KEVA LANDRUM-JOHNSON, SECTION E,
HONORABLE ROBIN D. PITTMAN, SECTION F,
HONORABLE CAMILLE BURAS, SECTION H,
HONORABLE KAREN K. HERMAN, SECTION I,
HONORABLE DARRYL DERBIGNY, SECTION J,
HONORABLE ARTHUR L. HUNTER, JR., SECTION K,
HONORABLE TERRY Q. ALARCON, SECTION L, AND
HONORABLE GERARD HANSEN, MAGISTRATE,
OF THE ORLEANS PARISH CRIMINAL DISTRICT COURT, STATE OF LOUISIANA;

AND

HONORABLE PAUL N. SENS, SECTION A,
HONORABLE SEAN T. EARLY, SECTION B,
HONORABLE DESIREE CHARBONNET, SECTION C,
AND HONORABLE JOE LANDRY, SECTION D
OF THE NEWS ORLEANS MUNICIPAL COURT

AND

HONORABLE ERNESTINE S. GRAY, CHIEF JUDGE,
HONORABLE MARK DOHERTY,
HONORABLE TRACY FLEMINGS-DAVILLIER,
HONORABLE LAWRENCE L. LAGARDE, JR.,
HONORABLE TAMMY STEWART, AND
HONORABLE CANDICE BATES ANDERSON
OF THE ORLEANS PARISH JUVENILE COURT

FILED:

DEPUTY CLERK

**PETITION FOR WRIT OF MANDAMUS
AND INCORPORATED MEMORANDUM IN SUPPORT**

**PETITION FOR WRIT OF MANDAMUS
AND INCORPORATED MEMORANDUM IN SUPPORT**

NOW INTO COURT, through undersigned counsel, comes the Louisiana Public Defender Board and Derwyn Del Bunton, in his official capacity as Public Defender for the 41st Judicial District and as Administrator of the Indigent Defender Fund for the 41st Judicial District, and for their Petition for Writ of Mandamus and Rule to Show Cause respectfully allege as follows:

Parties

1.

Petitioner Louisiana Public Defender Board is a state agency created by La. R.S. 15:146 et seq., and located in Baton Rouge, Louisiana, and acting through its Chairman and Board Members. Pursuant to La. R.S. 15:147, "the Louisiana Public Defender Board shall have all regulatory authority, control, supervision, and jurisdiction, including auditing and enforcement, and all power incidental or necessary to such regulatory authority, control, supervision, and jurisdiction over all aspects of the delivery of public defender services throughout the courts of the state of Louisiana," and as such has the authority to oversee the Orleans Public Defender and to supervise, control, and enforce the indigent defender fund established by La. R.S. 15:168.

2.

Petitioner Derwyn Del Bunton appears in his official capacity as Public Defender for the 41st Judicial District pursuant to La. R.S. 15:161, and as Administrator of the Indigent Defender Fund for the 41st Judicial District, State of Louisiana, as set forth in La. R.S. 15:168,¹ and is domiciled in New Orleans, Louisiana.

¹ The relevant portion of La. R.S. 15:168 reads:

A. There is hereby created within each judicial district an indigent defender fund which shall be administered by the district public defender and composed of funds provided for by this Section and such funds as may be appropriated or otherwise made available to it.

B.(1) Every court of original criminal jurisdiction, except in the town of Jonesville, in the city of Plaquemine, and in mayors' courts in municipalities having a population of less than five thousand, shall remit the following special costs to the district indigent defender fund for the following violations, under state statute as well as under parish or municipal ordinance, except a parking violation. The sum of thirty-five dollars shall be assessed in cases in which a defendant is convicted after a trial, a plea of guilty or nolo contendere, or after forfeiting bond and shall be in addition to all other fines, costs, or forfeitures imposed.

3.

Made Defendants herein are:

- (1) Honorable Julian Parker, in his official capacity as Chief Judge, Section G, of the Orleans Parish Criminal District Court, State of Louisiana;
- (2) Honorable Laurie A. White, in her official capacity as Judge of Section A, the Orleans Parish Criminal District Court, State of Louisiana;
- (3) Honorable Lynda Van Davis, in her official capacity as Judge of Section B, the Orleans Parish Criminal District Court, State of Louisiana;
- (4) Honorable Benedict Willard, in his official capacity as Judge of Section C, the Orleans Parish Criminal District Court, State of Louisiana;
- (5) Honorable Frank A. Marullo, Jr., in his official capacity as Judge of Section D, the Orleans Parish Criminal District Court, State of Louisiana;
- (6) Honorable Keva Landrum-Johnson, in her official capacity as Judge of Section E, the Orleans Parish Criminal District Court, State of Louisiana;
- (7) Honorable Robin Pittmann, in her official capacity as Judge of Section F, the Orleans Parish Criminal District Court, State of Louisiana;
- (8) Honorable Camille Buras, in her official capacity as Judge of Section H, the Orleans Parish Criminal District Court, State of Louisiana;
- (9) Honorable Karen K. Herman, in her official capacity as Judge of Section I, the Orleans Parish Criminal District Court, State of Louisiana;
- (10) Honorable Darryl Derbigny, in his official capacity as Judge of Section J, the Orleans Parish Criminal District Court, State of Louisiana;
- (11) Honorable Arthur L. Hunter, Jr., in his official capacity as Judge of Section K, the Orleans Parish Criminal District Court, State of Louisiana;
- (12) Honorable Terry Q. Alarcon, in his official capacity as Judge of Section L, the Orleans Parish Criminal District Court, State of Louisiana;

(2) Such amounts shall be remitted by the respective recipients thereof to the judicial district indigent defender fund monthly by the tenth day of the succeeding month.

(13) Honorable Gerard Hansen, in his official capacity as Magistrate Judge of the Orleans Parish Criminal District Court, State of Louisiana;

(14) Honorable Paul N. Sens, in his official capacity as Judge of Section A, the New Orleans Municipal Court, New Orleans, Louisiana;

(15) Honorable Sean T. Early, in his official capacity as Judge of Section B, the New Orleans Municipal Court, New Orleans, Louisiana;

(16) Honorable Desiree Charbonnet, in her official capacity as Judge of Section C, the New Orleans Municipal Court, New Orleans, Louisiana;

(17) Honorable Joe Landry, in his official capacity as Judge of Section D, the New Orleans Municipal Court, New Orleans, Louisiana;

(18) Honorable Ernestine S. Gray, in her official capacity as Chief Judge of the Orleans Parish Juvenile Court, State of Louisiana;

(19) Honorable Mark Doherty, in his official capacity as Judge of the Orleans Parish Juvenile Court, State of Louisiana;

(20) Honorable Tracy Flemings-Davillier, in her official capacity as Judge of the Orleans Parish Juvenile Court, State of Louisiana;

(21) Honorable Lawrence L. Lagarde, Jr., in his official capacity as Judge of the Orleans Parish Juvenile Court, State of Louisiana;

(22) Honorable Tammy Stewart, in her official capacity as Judge of the Orleans Parish Juvenile Court, State of Louisiana; and

(23) Honorable Candice Bates Anderson, in her official capacity as Judge of the Orleans Parish Juvenile Court, State of Louisiana.

Venue

4.

Venue is proper in the Nineteenth Judicial District Court pursuant to Article 42 of the Louisiana Code of Civil Procedure and La. R.S. 15:149.1.

The Judicial District Indigent Defender Fund

5.

Louisiana Revised Statute 15:168 requires that all courts of original criminal jurisdiction, for any violation of a state statute or parish or municipal ordinance, with the exception of parking tickets, assess a fee of \$35 on all defendants who are convicted after trial, pled guilty or nolo contendere, or forfeit bond.

6.

This \$35 statutory fee is mandatory and its assessment cannot be waived by any judge.

7.

This fee goes toward the funding of the public defenders office, as the statute states:

A. There is hereby created within each judicial district an indigent defender fund which shall be administered by the district public defender and composed of funds provided for by this Section and such funds as may be appropriated or otherwise made available to it.

B. (1) Every court of original criminal jurisdiction, except in the town of Jonesville, in the city of Plaquemine, and in mayors' courts in municipalities having a population of less than five thousand, shall remit the following special costs to the district indigent defender fund for the following violations, under state statute as well as under parish or municipal ordinance, except a parking violation. The sum of thirty-five dollars shall be assessed in cases in which a defendant is convicted after a trial, a plea of guilty or nolo contendere, or after forfeiting bond and shall be in addition to all other fines, costs, or forfeitures imposed.

(2) Such amounts shall be remitted by the respective recipients thereof to the judicial district indigent defender fund monthly by the tenth day of the succeeding month.

C. Except as otherwise provided by the Louisiana Public Defender Act, the funds provided for in this Section, and any other self-generated revenue and all interest or other income earned from the investment of such funds and self-generated revenue shall be retained in the district and shall be used and administered by the district public defender.

D. No defendant who has retained private counsel of record shall be assessed any costs to be credited to the indigent defender fund, other than the special costs established by Subsection B of this Section, unless the board has provided representation of record for that defendant at some point in that criminal proceeding.

8.

In Orleans Parish, the statutory indigent defender fund fee goes toward funding the Orleans Public Defender's office and is necessary for insuring the delivery of legal services to indigent defendants by that office.

9.

The provision of counsel to the indigent is a right guaranteed by the Sixth Amendment of the U.S. Constitution and Article I, section 13 of the Louisiana Constitution of 1974.

10.

As judges sitting in Orleans Parish and New Orleans courts vested with original criminal jurisdiction, each of the Defendants is charged with the mandated duty under the law of enforcing this statute.

11.

As judges sitting in Orleans Parish and New Orleans courts vested with original criminal jurisdiction, each of the Defendants lacks the authority or discretion to ignore, disregard or otherwise fail to comply with the mandatory assessment of the \$35 fee. *See, e.g., Twenty-Fourth Judicial District Indigent Defender Board v. Molaison, et al.*, No. 88-15 (La. App. 5 Cir. 1988) 522 So.2d 177, 181 (holding that sentencing judges lack authority to waive imposition and collection of indigent defender fund assessments); *writ denied*, 88-1122 (La. 1988), 524 So.2d 512.

12.

Upon information and belief, the named Defendants have failed to perform the mandatory duty imposed upon them pursuant to La. R.S. 15:168 by failing to assess the statutory fee upon the defendants who appear before them who are accused of a violation of a state statute or parish or municipal ordinance (excepting parking tickets) and who are convicted, enter a plea of guilty or nolo contendere or forfeit a bond.

13.

Upon information and belief, the named Defendants routinely fail to assess the fee or they "waive" the fee, which they are without the power and authority to do.

14.

This failure has contributed to the loss of funds remitted to the indigent defender fund and distributed to the Orleans Public Defender's office, resulting in a now-critical underfunding of that office. This consequently affects the Orleans Public Defender's ability to provide effective representation to all indigent defendants in the criminal, juvenile, and municipal courts of Orleans Parish.

Mandamus

15.

Mandamus is a writ directing a public officer to perform a ministerial duty required by law. La. Code Civ. Proc. arts. 3861, 3863.

16.

The Defendants' assessment of the statutory indigent defender fund fee is a purely ministerial duty required by law, which leaves no room for any discretion in performing this act. *See* La. Code Civ. Proc. art. 3863.

17.

A writ of mandamus should be issued here, compelling Defendants to impose the statutory indigent defender fund fee upon all those defendants who appear before them and who accused of a violation of a state statute or parish or municipal ordinance (excepting parking tickets) and who are convicted, enter a plea of guilty or nolo contendere or forfeit a bond, because any further delay in imposing the aforesaid assessments will result in the inability of the Orleans Public Defender's office to discharge its duties to provide indigent criminal defense.

18.

The writ of mandamus should further direct Defendants to properly remit the collected assessment to the indigent defender fund monthly by the tenth day of the succeeding month, in compliance with La. R.S. 15:168.

19.

Therefore, this Court should order the issuance of an alternative writ directing Defendants to enforce La. R.S. 15:168, assess the statutory indigent defender fund fee, and remit the collected fees on a monthly basis. La. Civ. Code Pro. art. 3865.

20.

After ordering the issuance of an alternative writ, the Court should set for hearing, no less than two days and no more than 10 days after service of the alternative writ, the Petitioners' Rule to Show Cause why the alternative writ should not be made peremptory. La. Code Civ. Proc. art. 3782.

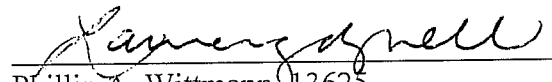
WHEREFORE, Petitioners, Louisiana Public Defender Board and Derwyn Del Bunton, in his official capacity as the Public Defender for the 41st Judicial District and as the Administrator of the Indigent Defender Fund for the 41st Judicial District, pray that this Court:

- (1) issue an alternative writ of mandamus directing each of the Defendants to impose for the benefit of the indigent defender fund of Orleans Parish of the State of Louisiana the assessment directed by La. R.S. 15:168 of \$35 upon all defendants who appear before them, who are accused of a violation of a state statute or parish or municipal ordinance (excepting parking tickets), and who are convicted, enter a plea of guilty or nolo contendere, or forfeit a bond; and
- (2) further direct in the alternative writ of mandamus each of the Defendants to remit all assessments to the indigent defender fund on a monthly basis by the tenth day of the succeeding month, in compliance with La. R.S. 15:168; and

- (3) set for hearing, not less than two days or more than ten days after the service of the writ, the Petitioner's Rule to Show Cause why the alternative writ of mandamus should not be made peremptory.

December 20, 2010

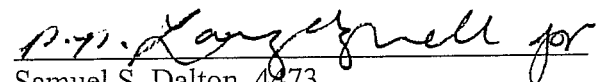
Respectfully submitted,



Phillip A. Wittmann, 13625
Lauren E. Godshall, 31465
Maggie A. Broussard, 33033

Of
STONE PIGMAN WALTHER
WITTMANN L.L.C.
546 Carondelet Street
New Orleans, Louisiana 70130-3588
Telephone: (504) 581-3200
Facsimile: (504) 596-0859

And



Samuel S. Dalton, 4473
2001 Jefferson Highway
P.O. Box 10501
Jefferson, Louisiana 70181-0501
Telephone: (504) 835-4289
Facsimile: (504) 835-4302

*Attorneys for Plaintiffs,
Louisiana Public Defender Board
and Derwyn Del Bunton, in his official
capacity as Public Defender for the 41st
Judicial District, and as the Administrator
of the Indigent Defender Fund for the 41st
Judicial District*

PLEASE SERVE:

1. Honorable Julian Parker, Section G, Orleans Parish Criminal District Court, 2700 Tulane Avenue, New Orleans, LA 70119
2. Honorable Laurie A. White, Section A, Orleans Parish Criminal District Court, 2700 Tulane Avenue, New Orleans, LA 70119
3. Honorable Lynda Van Davis, Section B, Orleans Parish Criminal District Court, 2700 Tulane Avenue, New Orleans, LA 70119
4. Honorable Benedict Willard, Section C, Orleans Parish Criminal District Court, 2700 Tulane Avenue, New Orleans, LA 70119

5. Honorable Frank A. Marullo, Jr., Section D, Orleans Parish Criminal District Court, 2700 Tulane Avenue, New Orleans, LA 70119
6. Honorable Keva Landrum-Johnson, Section E, Orleans Parish Criminal District Court, 2700 Tulane Avenue, New Orleans, LA 70119
7. Honorable Robin Pittmann, Section F, Orleans Parish Criminal District Court, 2700 Tulane Avenue, New Orleans, LA 70119
8. Honorable Camille Buras, Section H, Orleans Parish Criminal District Court, 2700 Tulane Avenue, New Orleans, LA 70119
9. Honorable Karen K. Herman, Section I, Orleans Parish Criminal District Court, 2700 Tulane Avenue, New Orleans, LA 70119
10. Honorable Darryl Derbigny, Section J, Orleans Parish Criminal District Court, 2700 Tulane Avenue, New Orleans, LA 70119
11. Honorable Arthur L. Hunter, Jr., Section K, Orleans Parish Criminal District Court, 2700 Tulane Avenue, New Orleans, LA 70119
12. Honorable Terry Q. Alarcon, Section L, Orleans Parish Criminal District Court, 2700 Tulane Avenue, New Orleans, LA 70119
13. Honorable Gerard Hansen, Magistrate Orleans Parish Criminal District Court, 2700 Tulane Avenue, New Orleans, LA 70119
14. Honorable Paul N. Sens, Section A, New Orleans Municipal Court, 727 South Broad Street, New Orleans, LA 70119
15. Honorable Sean T. Early, Section B, New Orleans Municipal Court, 727 South Broad Street, New Orleans, LA 70119
16. Honorable Desiree Charbonnet, Section C, New Orleans Municipal Court, 727 South Broad Street, New Orleans, LA 70119
17. Honorable Joe Landry, Section D, New Orleans Municipal Court, 727 South Broad Street, New Orleans, LA 70119
18. Honorable Ernestine S. Gray, Chief Judge, Orleans Parish Juvenile Court, 421 Loyola Avenue, New Orleans, LA 70112
19. Honorable Mark Doherty, Orleans Parish Juvenile Court, 421 Loyola Avenue, New Orleans, LA 70112
20. Honorable Tracy Flemings-Davillier, Orleans Parish Juvenile Court, 421 Loyola Avenue, New Orleans, LA 70112
21. Honorable Lawrence L. Lagarde, Jr., Orleans Parish Juvenile Court, 421 Loyola Avenue, New Orleans, LA 70112
22. Honorable Tammy Stewart, Orleans Parish Juvenile Court, 421 Loyola Avenue, New Orleans, LA 70112
23. Honorable Candice Bates Anderson, Orleans Parish Juvenile Court, 421 Loyola Avenue, New Orleans, LA 70112

19TH JUDICIAL DISTRICT COURT FOR THE PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

NO.

DIVISION

LOUISIANA PUBLIC DEFENDER BOARD
AND DERWYN DEL BUNTON, IN HIS OFFICIAL CAPACITY AS PUBLIC DEFENDER
FOR THE 41ST JUDICIAL DISTRICT AND AS ADMINISTRATOR OF THE INDIGENT
DEFENDER FUND FOR THE 41ST JUDICIAL DISTRICT,

VERSUS

HONORABLE JULIAN PARKER, CHIEF JUDGE, SECTION G,
HONORABLE LAURIE A. WHITE, SECTION A,
HONORABLE LYNDA VAN DAVIS, SECTION B,
HONORABLE BENEDICT WILLARD, SECTION C,
HONORABLE FRANK A. MARULLO, JR., SECTION D,
HONORABLE KEVA LANDRUM-JOHNSON, SECTION E,
HONORABLE ROBIN D. PITTMAN, SECTION F,
HONORABLE CAMILLE BURAS, SECTION H,
HONORABLE KAREN K. HERMAN, SECTION I,
HONORABLE DARRYL DERBIGNY, SECTION J,
HONORABLE ARTHUR L. HUNTER, JR., SECTION K,
HONORABLE TERRY Q. ALARCON, SECTION L, AND
HONORABLE GERARD HANSEN, MAGISTRATE,
OF THE ORLEANS PARISH CRIMINAL DISTRICT COURT, STATE OF LOUISIANA;

AND

HONORABLE PAUL N. SENS, SECTION A,
HONORABLE SEAN T. EARLY, SECTION B,
HONORABLE DESIREE CHARBONNET, SECTION C
AND HONORABLE JOE LANDRY, SECTION D
OF THE NEWS ORLEANS MUNICIPAL COURT

AND

HONORABLE ERNESTINE S. GRAY, CHIEF JUDGE,
HONORABLE MARK DOHERTY
HONORABLE TRACY FLEMINGS-DAVILLIER
HONORABLE LAWRENCE L. LAGARDE, JR.,
HONORABLE TAMMY STEWART, AND
HONORABLE CANDICE BATES ANDERSON
OF THE ORLEANS PARISH JUVENILE COURT

FILED:

DEPUTY CLERK

ORDER

Considering the above and foregoing Petition for Writ of Mandamus and
Incorporated Memorandum in Support,

19TH JUDICIAL DISTRICT
EAST BATON ROUGE PARISH, LA
FILED
2010 DEC 24 PM 2:13
DEPUTY CLERK OF COURT
DOUG MELBORN
CLERK OF COURSE FOR PARISH

IT IS HEREBY ORDERED that an alternative writ of mandamus is issued directing the named Defendants, Honorable Julian Parker, Honorable Laurie A. White, Honorable Lynda Van Davis, Honorable Benedict Willard, Honorable Frank A. Marullo, Jr., Honorable Keav Landrum-Johnson, Honorable Robin Pittmann, Honorable Camille Buras, Honorable Karen K. Herman, Honorable Darryl Derbigny, Honorable Arthur L. Hunter, Jr., Honorable Terry Q. Alarcon, Honorable Gerard Hansen, Honorable Paul N. Sens, Honorable Sean T. Early, Honorable Desiree Charbonnet, Honorable Joe Landry, Honorable Ernestine S. Gray, Honorable Mark Doherty, Honorable Tracy Flemings-Davillier, Honorable Lawrence L. Lagarde, Jr., Honorable Tammy Stewart, and Honorable Candice Bates Anderson, impose for the benefit of the indigent defender fund of Orleans Parish of the State of Louisiana the assessment directed by La. R.S. 15:168 of \$35 upon all defendants who appear before them, who are accused of a violation of a state statute or parish or municipal ordinance (excepting parking tickets), and who are convicted, enter a plea of guilty or nolo contendere or forfeit a bond and, further, to remit all collected assessments to the indigent defender fund monthly by the tenth day of the succeeding month, or, in the alternative, that the named Defendants appear and show cause on the ____th day of December, 2010, at _____ a.m./p.m., why this alternative writ of mandamus should not be made peremptory.

Baton Rouge, Louisiana, this ____ day of _____, 2010.

JUDGE

PLEASE SERVE:

1. Honorable Julian Parker, Section G, Orleans Parish Criminal District Court, 2700 Tulane Avenue, New Orleans, LA 70119
2. Honorable Laurie A. White, Section A, Orleans Parish Criminal District Court, 2700 Tulane Avenue, New Orleans, LA 70119
3. Honorable Lynda Van Davis, Section B, Orleans Parish Criminal District Court, 2700 Tulane Avenue, New Orleans, LA 70119
4. Honorable Benedict Willard, Section C, Orleans Parish Criminal District Court, 2700 Tulane Avenue, New Orleans, LA 70119

5. Honorable Frank A. Marullo, Jr., Section D, Orleans Parish Criminal District Court, 2700 Tulane Avenue, New Orleans, LA 70119
6. Honorable Keva Landrum-Johnson, Section E, Orleans Parish Criminal District Court, 2700 Tulane Avenue, New Orleans, LA 70119
7. Honorable Robin Pittmann, Section F, Orleans Parish Criminal District Court, 2700 Tulane Avenue, New Orleans, LA 70119
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